

FOGNANI & FAUGHT, PLLC
Attorneys at Law

August 15, 2012

Via Certified Mail-Return Receipt Requested

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
(DJ # 90-11-3-08764)
P.O. Box 7611
Washington, D.C. 20044-7611

Via Hand Delivery

Margaret (Peggy) J. Livingston
Senior Enforcement Attorney
1595 Wynkoop Street (8-ENFL)
Denver, Colorado 80202-1129

Via Hand Delivery

Maureen O'Reilly
EPA Enforcement Specialist
Richardson Flat Superfund Site
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-RC)
Denver, Colorado 80202-1129

**Re: Notice of Suit or Claim Pursuant to Partial Consent Decree Lodged on
September 5, 2006**

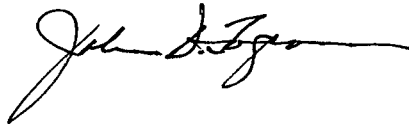
Dear Ladies and Gentlemen:

In accordance with Paragraph 22 of the above-referenced Partial Consent Decree, and on behalf of Xstrata PLC ("Xstrata"), a UK corporation, I am hereby providing notice that a suit or claim for contribution has been brought by ASARCO LLC ("Asarco"), a Delaware corporation, by filing a Complaint against Xstrata. For your information and clarification, Xstrata is the ultimate parent company of Noranda Mining Inc. ("Noranda") and Falconbridge Limited ("Falconbridge"), the parties to the relevant Partial Consent Decree. As Xstrata is not a successor-in-interest to those companies we consider the claim misguided. Nevertheless, it is possible that the correct entity or entities may be substituted in due course and survive legal challenge and as such Xstrata is hereby providing notice of the filing of a suit or claim for contribution, in accordance with paragraph 22 of the Partial Consent Decree and within the requisite 14-day time period from the date of service of Asarco's Complaint. The Complaint filed by Asarco was served on Xstrata on Friday, August 3, 2012, assuming service of process was effective.

Chief, Environmental Enforcement Section
Margaret (Peggy) J. Livingston, EPA Senior Enforcement Attorney
Maureen O'Reilly, EPA Enforcement Specialist
August 15, 2012
Page 2

For your convenience, we have attached to this Notice a copy of the Partial Consent Decree and the Asarco Complaint. We look forward to your thoughts and comments and to a further discussion of Xstrata's rights and obligations under the Partial Consent Decree given the filing of the Complaint by Asarco. Of course, if you have any questions or comments, please do not hesitate to contact me on behalf of Xstrata.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Fognani", with a long horizontal flourish extending to the right.

John D. Fognani
of FOGNANI & FAUGHT, PLLC

JDF:klw
Enclosures

cc w/encls.: Matthew Payten, Xstrata Copper Canada
Kendall R. McLaughlin, Esq.

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.

(Article 5, fourth paragraph)

SFP-2012-9784

Name and address of the requesting authority:

James A. Holtkamp
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101
USA

ZUZUSTERIEN - TO BE SERVED
à signifier-da notificara

Particulars of the parties*:

Asarco LLC, a Delaware corporation (Plaintiff)

vs.

Xstrata PLC (Defendant)

Registered Office, 4th Floor, Panton House, 25/27 Haymarket, London SW1Y 4EN, England

JUDICIAL DOCUMENT**

Nature and purpose of the document:

To give notice to the defendant of the commencement of a claim for monetary damages against it, and to summon it to serve written defenses to the claim.

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Civil claim for monetary damages. Plaintiff seeks to have a judgment entered against defendant in a just and equitable way to be determined by the Court of original jurisdiction.

Date and place for entering appearance:**

Not applicable (N/A)

Court which has given judgment:**

Not applicable (N/A)

Date of judgment:**

Not applicable (N/A)

Time-limits stated in the document:**

Defendant is to serve written defenses to the action on Plaintiff's attorney within 30 calendar days after receiving the documents

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document: Not applicable (N/A)

Time-limits stated in the document:** Not applicable (N/A)

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate.

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the
District of Utah

ASARCO LLC, a Delaware corporation

Plaintiff

v.

XSTRATA PLC, a UK corporation,

Defendant

Civil Action No. 2:12-cv-00527-EJF

Summons in a Civil Action

To: (Defendant's name and address)

XSTRATA PLC, a UK corporation

A lawsuit has been filed against you.

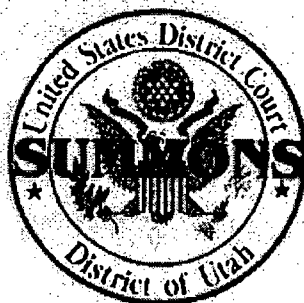
Within 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Gregory Evans
William R. Pletcher
Integer Law Corporation
811 W. 7th Street, 12th Floor, Los Angeles, CA 90017

James A. Holtkamp
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 07/02/2012



D. Mark Jones

Name of clerk of court

Jennifer Smith
Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____; or
(4) returning the summons unexecuted to the court clerk on _____; or
(5) other (specify) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

Date: _____

Server's signature

Printed name and title

Server's address

Print

Save As...

Export

Import

Reset

Gregory Evans (California SBN 147623)
Pro Hac Vice Application Pending
William R. Pletcher (California SBN 212664)
Pro Hac Vice Application Pending
Tanya Guerrero (New York SBN 4602553)
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Attorneys for Plaintiff Asarco LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ASARCO LLC, a Delaware corporation,
Plaintiff,

v.

XSTRATA PLC, a UK corporation,
Defendant.

COMPLAINT

Case No.: 2:12-cv-00527-EJF

Magistrate Judge Evelyn J. Furse

JURY TRIAL DEMANDED

ASARCO LLC ("Asarco") complains of Defendant and alleges:

NATURE OF THE ACTION

1. This is a civil action brought by Asarco pursuant to CERCLA for contribution against Defendant for costs incurred by Asarco at the Richardson Flats/Park City Mining District ("the Site") in Summit County, Utah. Asarco has recently paid \$8,850,000 to settle all of its CERCLA-related liability at the Site. This settlement included costs to cleanup and control contamination that cannot be associated with Asarco's historic mining activities, but can only have come from the Defendant's facilities.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and this Defendant, pursuant to 28 U.S.C. §§ 1331 and 1367(a), and Section 113 of CERCLA, 42 U.S.C. § 9613.

3. Venue is proper in this judicial district pursuant to 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the claims arose, and the threatened and/or actual releases of hazardous substances occurred within the District of Utah, Central Division.

PLAINTIFF

4. Asarco is a limited liability company organized under the laws of the state of Delaware. Asarco has taken responsibility for the cleanup of all of its known liabilities for any "releases" under CERCLA Section 107(a), *et seq.*, 42 U.S.C. § 9607(a), *et seq.*, for Asarco's historic mining operations at the Site, and Asarco has settled all of its liability at the Site with the United States.

DEFENDANT

5. Xstrata PLC ("Xstrata") is a UK corporation that has owned or operated mining operations involving and discharging hazardous substances in facilities in and near the Site. Xstrata operates a mining facility in Summit County, Utah. Xstrata is successor-in-interest to

Noranda Mining Company ("Noranda"). Xstrata acquired Falconbridge Limited in 2006, which merged with Noranda in 2005. Noranda operated mining operations in Summit County, Utah which discharged hazardous substances in and near the Site. Xstrata is an "owner" and/or "operator" of a "facility" pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2).

SITE DESCRIPTION AND FACTUAL BACKGROUND

6. The Richardson Flats/Park City Mining District ("Richardson Flats") site (the "Site") comprises several areas. The Richardson Flats Tailings Impoundment is located 1.5 miles northeast of Park City, Utah, and is part of a 650-acre property owned by the United Park City Mines Company ("UPCM"). The tailings impoundment covers approximately 160 acres in the northwest corner of the UPCM property in the Upper Silver Creek Watershed. The tailings impoundment is listed in the United States Environmental Protection Agency Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). The site identification number for the tailings impoundment is UT980952840.

7. In addition to the tailings impoundment, the Site includes the Ontario #3 mine, the Keetley Drain Tunnel, portions of the Lower Silver Creek Area, a slurry line, and other associated mine workings.

8. Defendant Xstrata, and its predecessor companies, owned and operated and/or continues to own and operate a facility in the vicinity of the Site and these operations have released and contributed lead and/or arsenic to the environment at the Site.

9. On August 9, 2005, Asarco filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

10. On September 23, 2008, Asarco filed a motion in the Bankruptcy Court for approval of a settlement pursuant to CERCLA whereby Asarco would pay environmental regulators \$8,850,000 to resolve its CERCLA liabilities at the Site ("Richardson Flats Site Settlement"). The Richardson Flats Site Settlement was approved by the Bankruptcy Court and United States District Court. The Richardson Flats Site Settlement was to be funded upon court approval of a plan of reorganization.

11. On November 13, 2009, Asarco's Plan of Reorganization, under which Asarco would make full payment on its environmental claims as approved by the Bankruptcy Court, was approved by the District Court for the Southern District of Texas.

12. On December 9, 2009, Asarco's Plan of Reorganization became effective, enabling disbursement of funds for environmental settlements, including funds for the Richardson Flats Site Settlement. Asarco fully funded the Richardson Flats Site Settlement at one hundred cents on the dollar as part of its reorganization. Thus, the Richardson Flats Site Settlement constitutes a judicially approved settlement which stems from enforcement action taken pursuant to Section 106 or Section 107 of CERCLA.

13. The Richardson Flats Site Settlement funds a cleanup at the Richardson Flats Site that addresses fully all of the Asarco waste, as well as other harmful substances governed under CERCLA and released by Defendant during its ownership or operation of facilities at the Richardson Flats Site or near or adjacent to the Richardson Flats Site.

COUNT I
CLAIM FOR CONTRIBUTION UNDER SECTION 113(f) OF CERCLA

14. Plaintiff incorporates by reference paragraphs 1 through 13 as if fully set forth herein.

15. The Richardson Flats Site and surrounding areas, are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of, placed, released, or otherwise became located in the Richardson Flats Site at times relevant to this action by Defendant.

17. Defendant is responsible for disposals or "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) into the environment at or from the Richardson Flats Site at times relevant to this action.

18. Defendant is liable under Section 107(a) of CERCLA because it owned or operated a facility at which such hazardous substances were disposed. 42 U.S.C. § 9607(a)(2).

19. Defendant is liable under Section 107(a) of CERCLA if the person arranged, by contract or otherwise, with a transporter for transport or disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

20. Defendant is liable under Section 107(a) of CERCLA if the person accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs. 42 U.S.C. § 9607(a)(4).

21. Defendant is a person who is liable for owning and/or operating facilities at or from which hazardous substances were disposed under 42 U.S.C. § 9607(a)(2), for arranging transport or disposal of hazardous substances under 42 U.S.C. § 9607(a)(3), and/or transporting hazardous substances in or near the Site, under 42 U.S.C. § 9607(a)(4).

22. Asarco has resolved CERCLA liability for response action with the United States through the judicially approved bankruptcy reorganization and may seek contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

23. To date, Asarco has incurred approximately \$8,850,000 for response action consistent with the NCP pursuant to 42 U.S.C. § 9607(a)(4)(B). This amount represents more than Plaintiff's allocable share of costs related to its releases or disposal of hazardous substances in the Richardson Flats Site.

24. Because Defendant qualifies as responsible party under CERCLA § 107(a), Defendant is liable under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for its equitable share in contribution to Asarco's Richardson Flats Site Settlement.

25. WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and against Defendant:

- Ordering Defendant to pay contribution to Plaintiff in a sum to be determined by the Court to be owed to Plaintiff for response costs;
- Awarding Plaintiff its costs and attorneys' fees; and
- Awarding Plaintiff all other relief that the Court deems appropriate.

Respectfully submitted,

Dated: June 5, 2012

By: /s/ James A. Holtkamp

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William R. Pletcher (California SBN 212664)
Pro Hac Vice Application Pending
Tanya Guerrero (New York SBN 4602553)
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